



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property**

Date last reviewed: **October 31, 2000**

Current Reviewer: **JoAnne Gordon**

Date current review completed: **April 17, 2003**

Briefly explain the subject matter of the document(s):

WAC 458-20-193 (Rule 193) discusses the application of retail sales, use, and business and occupation (B&O) taxes to inbound and outbound sales of tangible personal property. With respect to outbound sales of tangible personal property, the rule explains how retail sales tax and/or B&O tax exemptions apply to interstate sales, sales to persons in noncontiguous states, and sales to certain nonresidents. With respect to inbound sales, Rule 193 explains that persons located outside the state are subject to the B&O tax and the requirement to collect retail sales tax when nexus has been established. Rule 193 also explains the circumstances under which an out-of-state seller is responsible for collecting and remitting the state's use tax.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)



YES	NO	
		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

ETA 316.08.193, Sales to nonresidents provides detailed tax reporting instructions regarding the sales tax exemption that is available to certain nonresidents when purchasing tangible personal property for use outside Washington. As noted in the previous review of Rule 193, ETA 316 contains information that is best retained in an interpretative statement. However, ETA 316 should be amended to include updated information. Refer to the Ancillary Document Review Supplement for further information about ETA 316.

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):



ETA 316.08.193, Sales to nonresidents provides detailed tax reporting instructions regarding the sales tax exemption that is available to certain nonresidents when purchasing tangible personal property for use outside Washington.

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Carr Lane Manufacturing Co., v. Department of Revenue, BTA Docket No. 54917 (2001). Affirmed Department's determination that an out-of-state manufacturer had established sufficient nexus for purposes of imposing the B&O tax and that delivery of the goods had occurred in this state.

Appeals Division Decisions (WTDs):

- **Det. 01-188, 21 WTD 289-Concluded that Rule 194 rather than Rule 193 is the appropriate rule for determining whether a business has sufficient nexus with a state for that state to impose tax upon service activities.**
- **Det. No. 01-074, 20 WTD 531 (2001) - Determined that an out-of-state manufacturer making sales through a multi-level distribution network established nexus as independent distributors recruiting, training, and motivating downline distributors performed significant services for the manufacturer in establishing and maintaining a market within the state.**
- **Det. No. 00-20 WTD 507 (2001) - Overturned earlier determination (Det. No. 87-166, 3 WTD 53 (1987)). For purposes of the noncontiguous state exemption, it is not necessary that goods be delivered to a for-hire carrier in this state. Under circumstances such that "it is reasonably certain that the goods will transported directly to their place of ultimate use, delivery may also be made to the purchaser's dock, airport, depot, warehouse, or receiving terminal.**
- **Det. No. 99-298, 20 WTD 197 (2001) - Determined that delivery to the buyer does not occur out-of-state merely as a result of the inspection and acceptance of goods by the seller's quality assurance employee acting as a surrogate for the buyer when the agreement provides that final inspection and acceptance is to occur at the buyer's Washington location.**
- **Det. No. 98-148, 19 WTD 748 (2000) - Denied taxpayer's request for refund of B&O tax for periods before effective date of Rule 193. Taxpayer petitioned for refund based on assertion that transactions were exempt under PACCAR ruling. Petition denied on basis that taxpayer's facts were not identical to those present in PACCAR case.**
- **Det. No. 00-03, 19 WTD 685 (2000) - Determined that an out-of-state manufacturer's in-state activities satisfied the Commerce Clause's substantial nexus requirement. These activities included dealer training, supporting dealer's in-state promotional activities at trade shows, introducing and promoting new products, establishing a network of independent contractors to satisfy the taxpayer's obligations under written warranties, and delivery products into the state. Denied the taxpayer's Due Process Clause claim.**

Attorney General Opinions (AGOs):



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

Special Notices:

- **Special Notice for Direct Sellers, reissued April 2002 - Explains changes to Rule 246 concerning the B&O tax exemption for direct sellers and identifies certain WTDs that were rescinded with the adoption of Rule 246.**
- **Revision of Special Notice Previously Sent to Nonresident Corporations Holding Nonresident Permits, reissued April 2002, explains the Department's position with respect to sales of tangible personal property to corporations residing in eligible jurisdictions.**

5. Review Recommendation:

- | | |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u> X </u> | Amend |
| <u> </u> | Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u> </u> | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| <u> </u> | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

As noted in the previous rule review, Rule 193 should be revised to incorporate information found in several interpretative statements, re-evaluate discussion regarding issues of disassociation and receipt/delivery for the purpose of confirming that the information is consistent with current case law, and incorporate citations to other rules.



6. Manager action: Date: 4/28/03

AL Reviewed and accepted recommendation

Amendment priority:

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